



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of:

Serial No. 09/828,545

Group No. 3763

Filed: April 7, 2001

For: SELF-METERING CARTRIDGE

Examiner: A. Y. Lam

Commissioner of Patents & Trademarks
Washington, D. C. 20231

TRANSMITTAL OF APPEAL BRIEF (PATENT APPLICATION-37 CFR 191)

1. Transmitted herewith in triplicate is the APPEAL BRIEF in this application with respect to the Notice of Appeal filed on December 2, 2002.

2. Status of Applicant

This application is on behalf of:

 other than small entity

 x small entity

verified statement:

 attached

 x already filed

3. Fee for Filing Appeal Brief

Pursuant to 37 CFR 1.17(f) the fee for filing the Appeal Brief is:

 other than small entity

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\$

\$ 160

Appeal Brief fee due \$ 160

4. Attached is a check in the sum of \$ 160.

Reg. No. 25723

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Signature of Attorney

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FEE TRANSMITTAL

TOTAL AMOUNT OF PAYMENT (\$) 160.00

Complete if Known

Application Number	09/828,545
Filing Date	April 7, 2000
First Named Inventor	Lane
Group Art Unit	3763
Examiner Name	A. Y. Lam
Attorney Docket Number	263-05

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1 ☐ The Commissioner is hereby authorized to charge indicated fees and credit any over payments to:Deposit
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1 FILING FEE

Large Entity Fee Code	Small Entity Fee Code	Fee Description	Fee Paid
101	201	Utility filing	
106	206	Design filing fee	
107	207	Plant filing fee	
108	208	Reissue filing fee	

SUBTOTAL (1) (\$) 0

2 CLAIMS

Total Claims - 20 = X = Independent Claims - 3 = X = Multiple Dependent Claims =

Large Entity - Small Entity

Large Entity Fee Code	Small Entity Fee Code	Fee Description	Fee Paid
102	202	Independent claims in excess of 3	
103	203	Claims in excess of 20	
104	204	Multiple dependent claim	
109	209	Reissue independent claims over original patent	
110	210	Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$) 0

3 ADDITIONAL FEES

Large Entity Fee Code	Small Entity Fee Code	Fee Description	Fee Paid
105	205	Surcharge-late filing fee or oath	
109	209	Non-English specification	
147	247	For filing a request for reexamination	
112	212	Requesting publication of SIR prior to Examiner action	
113	213	Requesting publication of SIR after Examiner action	
115	215	Extension for response within first month	
116	216	Extension for response within second month	
117	217	Extension for response within third month	
118	218	Extension for response within fourth month	
119	219	Notice of Appeal	
120	220	Filing a brief in support of an appeal	
121	221	Request for oral hearing	
138	238	Petition to institute a public use proceeding	
140	240	Petition to revive unavoidably abandoned application	
141	241	Petition to revive unintentionally abandoned application	
142	242	Utility issue fee (for reissue)	
143	243	Design issue fee	
144	244	Plant issue fee	
122	222	Petitions to the Commissioner	
126	226	Submission of Information Disclosure Sheet	
501	501	Recording each patent assignment per property (x no. properties)	
?	?	Protest after application published	
?	?	Late Claim for priority during pendency	
114	214	Provisional Application filing	

Other fee (specify) Other fee (specify)

SUBTOTAL (3) (\$) 160

SUBMITTED BY

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Dean P. Edmundson

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Before The Board of Appeals & Interferences

In re Application of:
DONOVAN R. LANE
Serial No. 09/828,545
Filed: April 7, 2001
For: SELF-METERING CARTRIDGE

Group Art Unit: 3763

Examiner: A.Y. Lam

Attorney Docket No. 263-05

Appeal No. _____

Hon. Commissioner for Patents
Washington, D.C. 20231

BRIEF ON APPEAL

This brief is being submitted in support of the appeal
filed December 2, 2002. This brief is submitted in triplicate.

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I. REAL PARTY IN INTEREST

The real party in interest is the applicant, Donovan R. Lane.

II. RELATED APPEALS & INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 1-7, inclusive, are pending in this application. Only claims 3 and 4 have been rejected. They are the subject of this appeal.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection of the claims.

V. SUMMARY OF THE INVENTION

The invention pertains to a cartridge for a medicament. A plunger is positioned within the cartridge and is movable to dispense medicament through the anterior end. The cartridge further includes tab means projecting into the cartridge from the interior wall of the cartridge. The tab means is spaced a predetermined distance from the posterior end of the cartridge, and the plunger is located between the tab means and the anterior end of the cartridge.

The function of the tab means is for limiting the travel of a metering rod in a dispensing gun in which the cartridge is used. Thus, the presence of the tab means in the interior of the cartridge determines a fixed amount of

medicament to be dispensed with each actuation of the trigger of the dispensing gun.

In the preferred embodiment (claim 4), the tab means comprises a ring projecting into the cartridge from an interior wall of the cartridge.

VI. ISSUE

A. Whether claims 3 and 4 have been properly rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,984,900 (Mikkelsen).

VII. GROUPING OF CLAIMS

A. Claim 3 is an independent claim directed to a tubular cartridge for containing a medicament. The interior wall of the cartridge includes tab means projecting into the cartridge. The tab means is located a predetermined distance from the posterior end of the cartridge.

B. Claim 4 is dependent from claim 3 and specifies that the tab means comprises a ring projecting inwardly into the cartridge. This claim should be considered separately.

VIII. ARGUMENT

A. The Mikkelsen Reference Does Not Describe

The Cartridge Claimed By Applicant

The Mikkelsen patent is directed to a pen-shaped syringe or injection system. The system includes a housing in which there is a "basic part" coupled to a medicine reservoir or ampoule with a hypodermic needle at its distal

end. A piston rod extends into the ampoule, and a dosing mechanism is rotatably connected to a carrier which engages the piston rod. A spring inside the housing urges the basic part toward the distal end of the housing.

The syringe is cocked by moving a "sequence part" and the "basic part" axially toward the proximal end of the housing. The proximal end of the sequence part includes an internal thread for engaging the outer thread of a dose setting spindle. Rotation of the spindle moves the sequence part in an axial direction. The dosage of medicine to be dispensed is set by rotating the spindle. All of the mechanism used by Mikkelsen to control the size of the dosage is external to the medicine ampoule.

After the syringe has been cocked, a release trigger can be pushed which enables the spring to move the basic part (with attached needle) and the sequence part toward the distal end of the housing. This causes the needle to penetrate the skin of the patient. Then, in order to dispense the selected dose of medicine to the patient, a button is pushed to cause the piston rod to push the piston further into the ampoule containing the medicine.

Applicant's invention is directed to a tubular cartridge for containing a medicament. A plunger is positioned in the cartridge and it is movable to dispense the medicament through the anterior end of the cartridge. A

tab means on the interior wall of the cartridge projects into the cartridge. The tab means is located at a predetermined distance from the posterior end of the cartridge.

The tab means projecting into the cartridge from the interior wall is for the purpose of limiting the travel of a metering rod or detent in a pistol grip dispensing gun. By limiting the travel of a metering rod, the tab means limits the dispensing action of the gun to a predetermined amount of medicament for a single stroke of the gun. The preferred tab means is a ring, as shown in applicant's Fig. 1-3.

The Mikkelsen patent does not describe a cartridge for a medicament which includes tab means in the interior of the cartridge as described and claimed by applicant. The aspect of the Mikkelsen device which is most analogous to applicant's cartridge is the ampoule containing the medicine. That ampoule does not include tab means as required in applicant's cartridge. Certainly, Mikkelsen does not show or describe tab means comprising a ring in the interior of a medicament cartridge. Furthermore, there would be no purpose served by a tab means within Mikkelsen's ampoule.

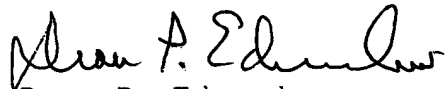
B. Conclusion

The Mikkelsen patent does not describe every claimed feature of applicant's invention. The ampoule of Mikkelsen

does not include tab means as required by applicant.
Certainly, Mikkelsen does not show or describe tab means
comprising a ring.

The Section 102(e) rejection is unsound and must be
reversed.

Respectfully submitted,



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APPENDIX

The Rejected Claims

3. An elongated tubular cartridge for containing a medicament, said cartridge including anterior and posterior ends and a plunger positioned within said cartridge; wherein said plunger is movable in said cartridge to dispense said medicament through said anterior end; wherein said cartridge further comprises an interior wall with tab means projecting into said cartridge from said interior wall; wherein said tab means is spaced a predetermined distance from said posterior end; and wherein said plunger is located between said tab means and said anterior end.

4. A cartridge in accordance with claim 3, wherein said tab means comprises a ring projecting inwardly into said cartridge.